

No. 90 - 100

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Supreme Court, U.S.

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**IN THE
SUPREME COURT
OF THE UNITED STATES**

October Term, 1990

R. O. SEGRAVES,

Petitioner,

vs.

RALPH M. PARSONS COMPANY,

Respondent.

ON APPEAL FROM THE
SUPREME COURT OF CALIFORNIA

BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

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Brief in Opposition to Petition for
Writ of Certiorari

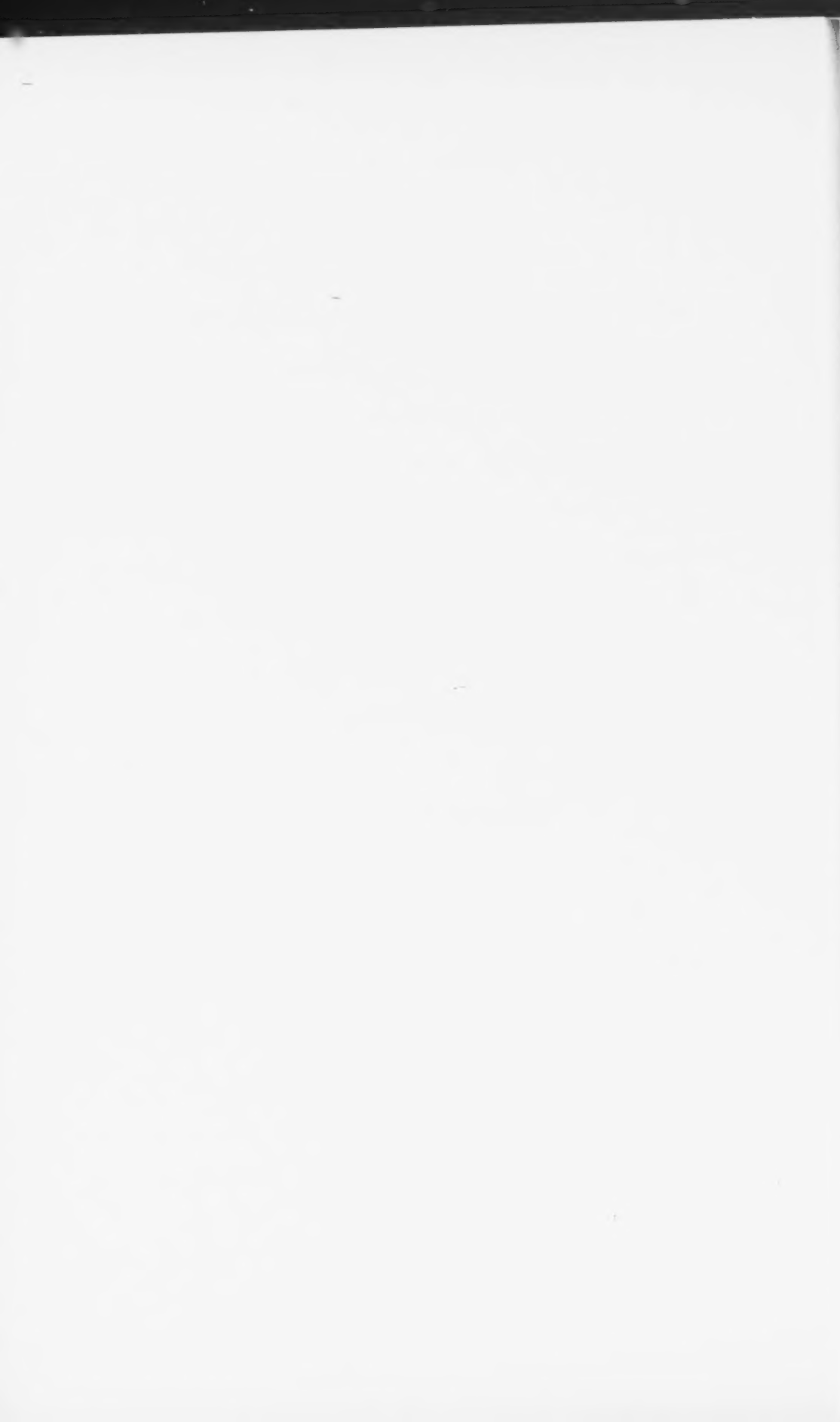
SUMMARY OF ARGUMENT

California's civil judicial system exceeds the due process requirements of the United States constitution such that there is no question of law at issue that justifies the granting of a Writ of Certiorari by the United States Supreme Court. The State of California has afforded Petitioner all assistance required by the United States Constitution for indigent, civil litigants.

STATEMENT OF THE CASE

Neither the State of California nor any other governmental entity is a party to this lawsuit. It involves two private parties.

Petitioner filed his Complaint on



February 6, 1985. Respondent's Answer was filed on March 12, 1985 and the case was assigned for trial on March 28, 1989 before the Honorable Michael Berg, Superior Court of California, County of Los Angeles.

On that date, Motions in Limine were presented to Judge Berg. One of the pre-trial Motions included Respondent's Notice of Motion and Motion in Limine to exclude findings, conclusions and the judgment of Unemployment Insurance Appeals Board and the Court in a Petition for Writ of Mandate Proceeding. Respondent's Motion in Limine was granted and the findings, conclusions and the judgment of the Unemployment Insurance Appeals Board and the Court in the Petition for Writ of Mandate Proceeding were excluded from

the trial. Petitioner filed his Amended Complaint on March 28, 1989 and the trial began March 29, 1989. Respondent's Motion for Judgment of Nonsuit was argued on April 7, 1989 before Judge Berg after presentation of the evidence. The Order Granting Respondent's Motion for Judgment of Nonsuit was filed on April 13, 1989.

The jury verdict was entered on April 17, 1989 giving Judgment for Petitioner. Subsequently, post-trial motions were filed by both Petitioner and Respondent including: (1) Petitioner's Motion for Judgment Notwithstanding the Verdict on Damage Issues; (2) Petitioner's Motion for a New Trial on Damages Only; (3) Respondent's Motion for Judgment Notwithstanding the Verdict; and

(4) Respondent's Motion for New Trial. The post-trial motions were argued and submitted on May 30, 1989. Judge Berg's 7-page Minute Order was entered on June 9, 1989 granting Respondent's Motion for New Trial and partially granting Respondent's Motion for Judgment Notwithstanding the Verdict.

Petitioner appealed the trial court's Order to the California Court of Appeal. When Petitioner filed his Notice of Appeal, he elected to proceed by appendix in lieu of a clerk's transcript and initially requested preparation of a reporter's transcript, including all oral proceedings. Cal. Rules of Court rule 5.1. Thereafter, Petitioner withdrew his request for preparation of a reporter's transcript and notified the Court of Appeal of his intention to

proceed on the judgment roll. Cal. Rules of Court rule 5(f).

The Court of Appeal affirmed the trial court's Order on December 20, 1989.

The California Supreme Court denied Petitioner's request for Review After Judgment by the Court of Appeal on March 14, 1990.

STATEMENT OF FACTS

Petitioner filed his lawsuit claiming damages for the alleged wrongful termination of his employment by Respondent based upon breach of contract and the implied covenant of good faith and fair dealing. Petitioner also claimed damages for libel and intentional and negligent infliction of

emotional distress.

Petitioner was hired by Respondent on June 1, 1976, as a Chief Process Engineer, and remained employed by Respondent for approximately eight (8) years. Petitioner was discharged by Respondent on February 10, 1984, for good cause and in good faith. The factors of good cause fell into the categories of (1) falsification of Respondent's records, (2) misappropriation of Respondent's and Respondent's client's funds, (3) willful violation of Respondent's sick leave policy and (4) absence from Respondent's office without authority.

Prior to Petitioner's termination, Respondent caused a thorough audit to be done of Petitioner's travel and expense

reports and the use of Respondent's telephone credit card by Petitioner. The audit disclosed that Petitioner: (1) substantially abused the use of Respondent's telephone credit card, (2) falsified Respondent's records, (3) misappropriated Respondent's and Respondent's client's funds, (4) willfully violated Respondent's sick leave policy and (5) was absent from Respondent's office without authority.

Respondent had good cause to terminate Petitioner's employment and at all times acted in good faith. Therefore, there was no breach of contract or the implied covenant of good faith and fair dealing.

Petitioner's claims for libel and intentional and negligent infliction of

emotional distress were dismissed by the trial court on Respondent's request for a nonsuit on those claims.

ARGUMENT

I.

THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION DOES NOT REQUIRE STATES TO PROVIDE INDIGENT, CIVIL PLAINTIFFS WITH FREE REPORTER'S TRANSCRIPTS.

While the United States Supreme Court has rendered several decisions outlining what assistance States must provide indigent criminal and civil litigants, the Court has never indicated that indigent, civil litigants were entitled to a free transcript.

In Boddie v. Connecticut, 401 U.S. 371 (1971), the Court held unconstitutional, as applied to indigents, a State requirement that individuals pay court fees and costs of about \$60 in order to

sue for divorce. Justice Harlen delivered the opinion of the Court: "We do not decide that access for all individuals to the Courts is a right that is, in all circumstances, guaranteed by the Due Process Clause," but only that, "given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages." Id. at 374-376, 382-383.

In United States v. Kras, 409 U.S. 434 (1973), the Court upheld a provision of the Bankruptcy Act requiring individuals seeking voluntary discharge to pay

costs and fees of about \$50. Justice Blackman delivered the opinion of the Court:

"The denial of access to the judicial forum in [Boddie] touched directly on the marital relationship and on the associational interest that surround the establishment and dissolution of that relationship. On many occasions we have recognized the fundamental importance of these interests under our Constitution. [Kras'] alleged interest in the elimination of his debt burden does not rise to the same constitutional level. If Kras is not discharged in bankruptcy, his position will not be materially

altered in any constitutional sense." Id. at 444-445.

In Ortwein v. Schwab, 410 U.S. 656 (1973), the Court, in a per curiam opinion, upheld a \$25 Appellate Court filing fee as applied to indigents who sought to appeal administrative decisions reducing their welfare benefits:

"[The interest in increased welfare benefits,] like the interest at issue in [Kras] has far less constitutional significance than the interest of the [Boddie] appellants. . . . Each of the present appellants has received an agency hearing, and this Court has long recognized that, even in criminal cases, due process does not require a

State to provide an appellate system. . . . Under the facts of this case, appellants were not denied due process. . . . Nor does the filing fee violate equal protection on the ground that it discriminates against the poor.

. . . As in Kras, this litigation 'is in the area of economics and social welfare' and the applicable standard is thus that of rational justification." Id. at 659-660.

Clearly, the Fifth Amendment of the United States Constitution does not require California to provide Petitioner with a free transcript. Petitioner's interest in his claim against Respondent, "has far less constitutional signifi-

cance than the interest of the Boddie appellants." Petitioner's claims against Respondent are in the "area of economics and social welfare." Petitioner's claims against Respondent received a full hearing in the California trial court.

While California is not required to provide an appellate system to review its trial court's decisions, the California Court of Appeal did waive Petitioner's filing fees. California is not constitutionally mandated to waive the cost of a transcript to facilitate Petitioner's appeal. ~

In addition and very important in this case, Petitioner withdrew his request for a reporter's transcript and elected to proceed on the judgment

role. Cal. Rules of Court rule 5(f). Accordingly, Petitioner waived his right to a reporter's transcript. Thus, the Petition for Writ of Certiorari should be denied.

II.

THE SEVENTH AMENDMENT OF THE UNITED STATES CONSTITUTION DOES NOT APPLY TO STATE COURT PROCEEDINGS

The United States Supreme Court has held the Seventh Amendment of the United States Constitution is not a fundamental aspect of due process or the liberty protected by the due process clause of the Fourteenth Amendment so that it is not applicable to State court proceedings. Minneapolis and St. Louis Railroad Co. v. Bombolis, 241 U.S. 211 (1916); Justice Holmes' comments in Chicago, Rock Island & Pac. Ry. v. Cole, 251 U.S. 54, 56 (1919). Accordingly, the Seventh

Amendment does not afford Petitioner a foundation on which to predicate his Petition.

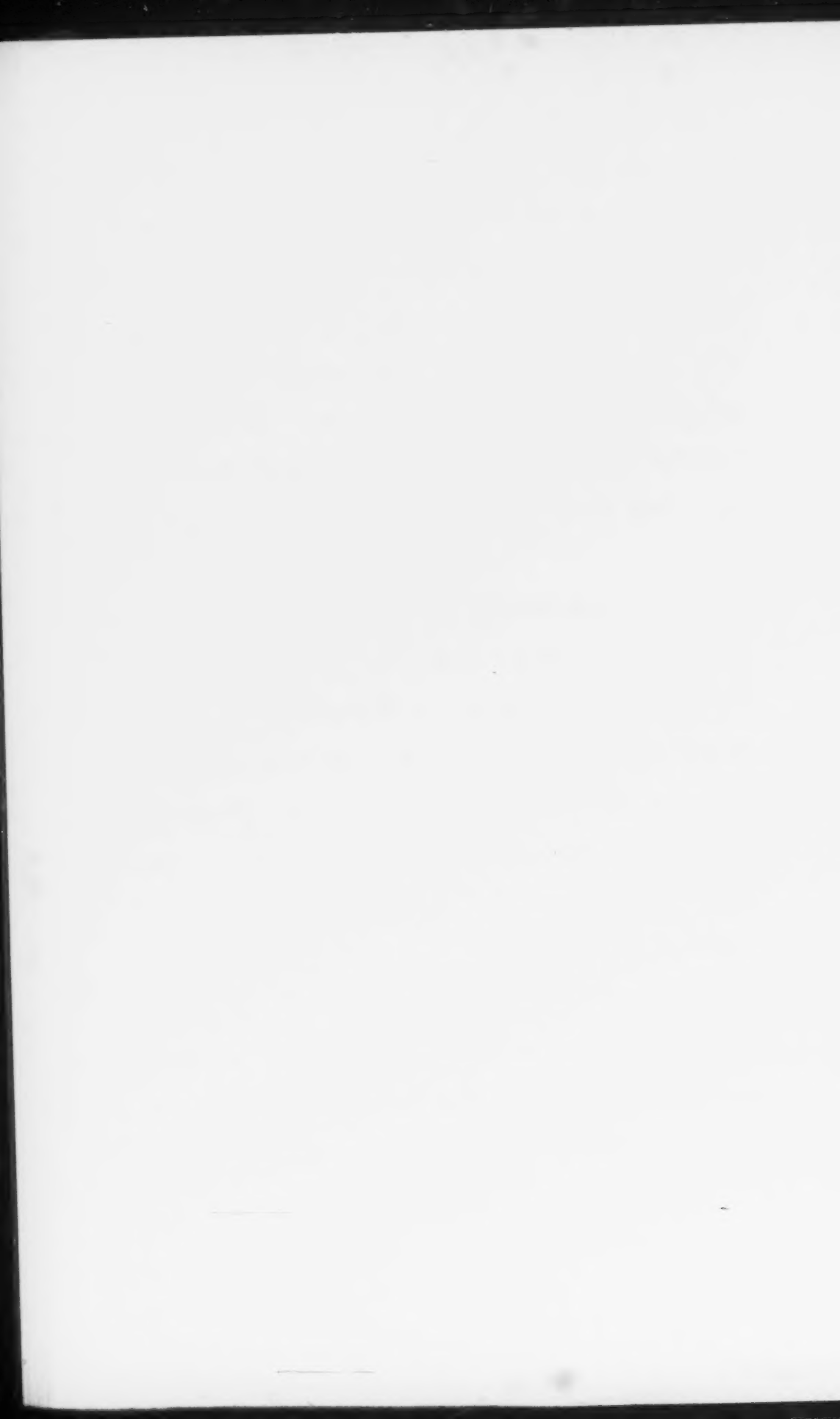
Even if the Seventh Amendment was applicable to State court proceedings, both the Federal and State judicial systems have recognized the trial court's prerogative to regulate various procedural aspects of jury trials, by granting motions for summary judgment, new trial, directed verdict and judgment notwithstanding the verdict. The major constitutional justification for these procedures is that analogous devices existed at common law.

The United States Supreme Court has ruled that the important fact is that at common law there was some mechanism by which the judge could determine that the

evidence was insufficient for the jury to consider or that the evidence was insufficient to support the jury's verdict. Galloway v. U.S., 319 U.S. 372, 391 (1941); Baltimore & Carolina Line, Inc. v. Redman, 295 U.S. 654, 659 (1934); Neely v. Martin K. Eby Constr. Co., 386 U.S. 317 471 (1967).

The California Constitution incorporated the common law as it existed in 1850. Accordingly, California enacted specific statutory provisions regarding a judge's authority to order a nonsuit, judgment notwithstanding the verdict and new trial. Cal. Code of Civ. Pro. §§581c, 629 and 659.

Petitioner's reliance on the Seventh Amendment of the United States Constitution is misplaced. The Seventh



Amendment is not applicable to State court proceedings and the California Legislature has enacted specific statutory provisions authorizing trial court judges to make orders granting a nonsuit, judgment notwithstanding the verdict and new trial. Accordingly, the Petition for Writ of Certiorari should be denied.

III.

**THE UNITED STATES SUPREME COURT DOES NOT
HAVE JURISDICTION TO REVIEW
PETITIONER'S STATE LAW ISSUES.**

The apparent intent of Petitioner's Questions Presented Numbers 3, 4 and 5 is to bring State law issues before the United States Supreme Court. Questions 3, 4 and 5 raise State law issues which are not properly before this Court under Petitioner's jurisdictional basis, 28 U.S.C. §1257, unless Petitioner is infer-



ring some type of United States Constitution due process violation.

A. California Courts are Accountable in Writ of Mandate Proceedings.

California Code of Civil Procedure sections 1067-1110b set forth California's appellate review process. Petitioner requested review by both California's intermediate Court of Appeal and Supreme Court.

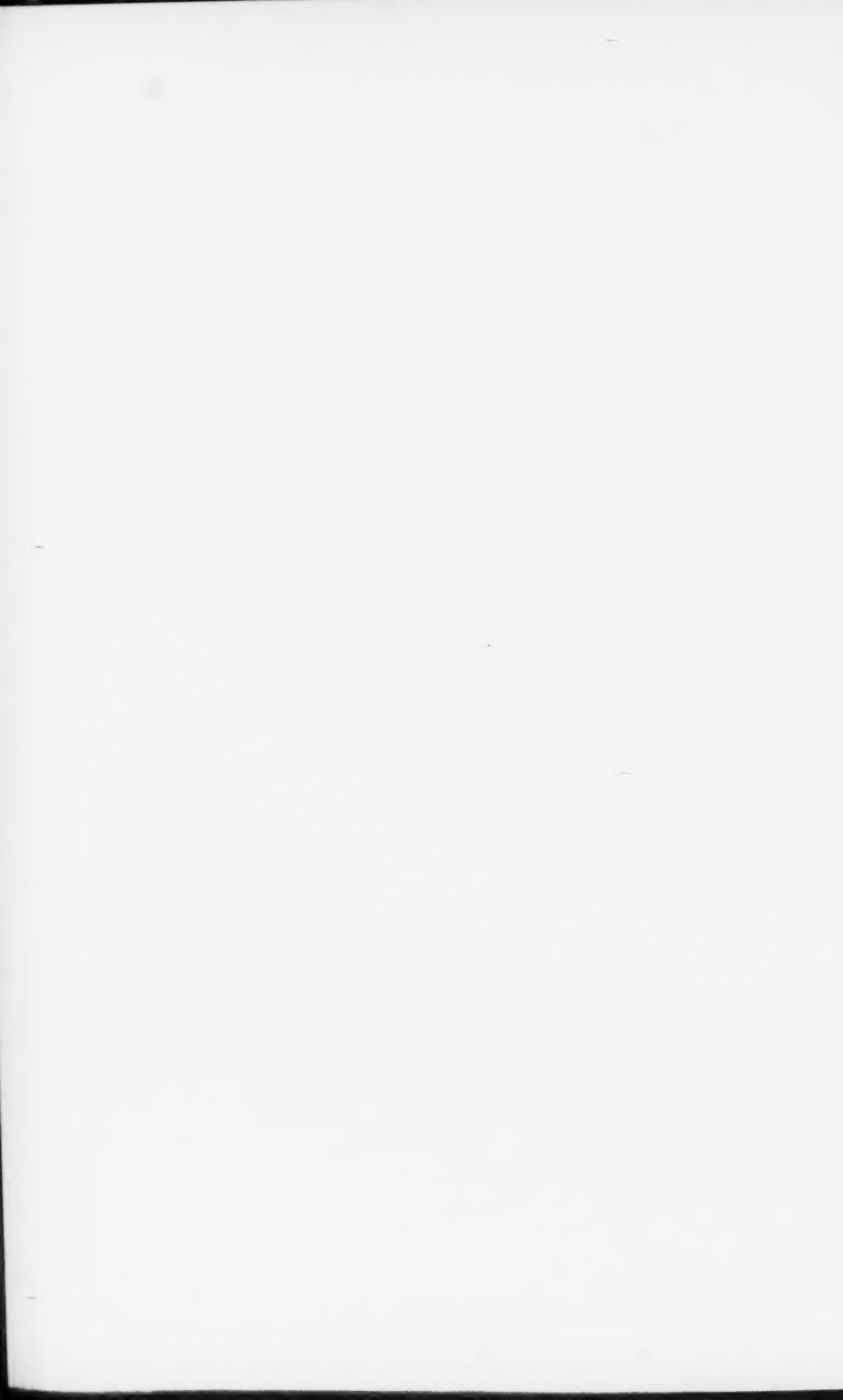
Review by the California Supreme Court of a decision rendered by the California Court of Appeal in a civil matter is discretionary. Petitioner's request for Review After Judgment By The Court Of Appeal was denied by the California Supreme Court on March 14, 1990 as was Petitioner's Petition for Writ of Mandate.



Therefore, the issues raised by Petitioner's Questions Presented Numbers 3, 4 and 5 were presented to the Supreme Court of California by Petitioner. The Supreme Court of California denied Petitioner's request for review. Accordingly, the Petition for Writ of Certiorari should be denied.

**B. The Tort and Punitive Damages
Awarded By The Jury Violated
California Law.**

The tort damages including punitive damages for breach of the implied covenant of good faith and fair dealing awarded by the jury violated California law as set forth in Foley v. Interactive Data Corp., 47 Cal.3d 654 (1988) which was made retroactive by the California Supreme Court in Newman vs. Emerson Radio Corp., 48 Cal.3d 973 (1989).



The Foley court stated:

". . . [W]e hold that tort remedies are not available for breach of the implied covenant in an employment contract to employees who allege they have been discharged in violation of the covenant." Id. at 700.

Subsequently, the Newman court held:

"We conclude that there is no compelling reason to depart from the general rule of retroactive application of judicial decisions in this case. . . Accordingly, we hold that Foley vs. Interactive Data Corp., supra, 47 Cal.3d 654, shall be given full retroactive effect



as to all cases not yet final on January 30, 1989, the date that decision became final."

Clearly the tort and punitive damages awarded by the jury for breach of the implied covenant of good faith and fair dealing were against the law as set forth by the California Supreme Court and the trial judge properly granted Respondent's Motion for Judgment Notwithstanding the Verdict on the tort and punitive damage awards. Petitioner's request for review of this issue was denied by the California Supreme Court on March 14, 1990. Accordingly, the Petition for Writ of Certiorari should be denied.

CONCLUSION

For all of the above reasons,

Respondent respectfully requests that
this Court deny the Petition for Writ of
Certiorari.

Dated: August 1, 1990

Respectfully submitted,
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